

Consideration of recommendation for preliminary adoption of new article, 312 IAC 27, governing the flood control revolving fund; Administrative Cause No. 08-064A

In early 2008, SB 104 was enacted and signed into law by Governor Mitch Daniels. The State Board of Finance was removed from the administration and approval process for a flood control revolving fund in this legislation. The flood control revolving fund is a low-interest loan to local units of government to borrow money to build or repair flood control works like a levee or a pump station. Presented for consideration and possible recommendation for adoption is a short set of governing rules. Adoption of the rules would streamline the approval process and define administration of the decision-making methodology.

Flood Control Revolving Fund
Administrative Cause No. 08-064A
July 24, 2008

ARTICLE 27. FLOOD CONTROL REVOLVING FUND

Rule 1. Application and Administration

312 IAC 27-1-1 Application of article

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 1. This article governs an activity that is controlled by IC 14-28-5.

(Natural Resources Commission; 312 IAC 27-1-1)

312 IAC 27-1-2 Administration

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 2. (a) The department shall administer IC 14-28-5 and this article.

(b) Except as provided in subsection (c) or as otherwise specified, the commission delegates authority to the director or a designate of the director to take any action that is appropriate for the implementation of IC 14-28-5 and this article.

(c) The commission is the ultimate authority for an agency action under IC 14-10-2-3. *(Natural Resources Commission; 312 IAC 27-1-2)*

312 IAC 27-1-3 Service of applications and documents

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 3. (a) This section governs service on the department of any application for a loan or other document required under the flood control program, IC 14-28-5, or this article.

(b) The service of a loan application or other document shall be made upon the division by any of the following:

(1) Personal delivery.

(2) United States mail under any of the following categories:

(A) First class.

(B) Certified.

(C) Express.

(D) Priority.

(3) Private carrier.

(4) Facsimile mail.

(5) Electronic mail.

(c) An application for a loan or other document is received on the earliest of the following dates:

(1) The date on which the document is delivered.

(2) The date of the postmark on the envelope containing the document if the document is sent by a category of United States mail described in subsection (b)(2) and is properly addressed.

(3) The date on which the document is deposited with a private carrier, as shown by receipt issued by the carrier, if the document is sent by a private carrier and is properly addressed.

(4) The date of receipt of the document, if the date of deposit or postmark cannot be determined.

(d) As used in this section, “private carrier” means a person, other than the United States Postal Service, that delivers mail as defined in IC 23-1-20-15. (*Natural Resources Commission; 312 IAC 27-1-3*)

Rule 2. Definitions

312 IAC 27-2-1 Applicability

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 1. The definitions contained in

(1) IC 14-28-5-1 through 14-28-5-4;

(2) 312 IAC 1; and

(3) this rule;

apply throughout this article. (*Natural Resources Commission; 312 IAC 27-2-1*)

312 IAC 27-2-2 “Appurtenant works” defined

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 2. “Appurtenant works” means the features of a dike, levee, or other flood protective work that are reasonably required for the safe and proper operation of a structure financed, in whole or in part, through the fund. The term includes each of the following:

(1) A spillway system.

(2) An outlet work.

(3) A gate or valve.

(4) A tunnel.

(5) A conduit.

(6) An embankment.

(7) A pump.

(8) A generator or other electrical supply system.

(9) A pumping station.

(11) A closure structure.

(12) A similar flood protective work. (*Natural Resources Commission; 312 IAC 27-2-2*)

312 IAC 27-2-3 “Division” defined

Authority: IC 14-10-2-4; IC 14-28-5-6
Affected: IC 14-28-5

Sec. 3. “Division” means the division of water of the department. (*Natural Resources Commission; 312 IAC 27-2-3*)

312 IAC 27-2-3 “State budget agency” defined
Authority: IC 14-10-2-4; IC 14-28-5-6
Affected: IC 14-28-5.

Sec. 4. “State budget agency” refers to the budget agency created as an agency of the state under IC 4-12-1-3. (*Natural Resources Commission; 312 IAC 27-2-3*)

Rule 3. Execution of the Flood Control Revolving Fund

312 IAC 27-3-1 Consideration of Flood Control Revolving Fund
Authority: IC 14-10-2-4; IC 14-28-5-6
Affected: IC 14-28-5

Sec. 1. The department may loan money from the fund to a local unit if each of the following conditions are met:

- (1) The state budget agency determines the fund has sufficient available money.**
- (2) The local unit submits a completed application for a loan under IC 14-28-5-9.**
- (3) The local unit adequately documents a plan for and the ability to repay the loan. A local unit which is seeking to borrow from the fund, and which has outstanding financial commitments affecting the ability to repay the loan, shall include copies of the commitments with the application.**
- (4) The local unit provides an ordinance or resolution, enacted by the governing board of the local unit, which authorizes the flood control program.**
- (5) The local unit agrees to do each of the following:**
 - (A) Maintain all papers, accounting records, and other documents pertaining to the flood control program for which the loan was secured.**
 - (B) Make available at all reasonable times to the department, for inspection and copying at the offices of the local unit, the documents described in clause (A).**
 - (C) Allow the department to conduct inspections of facilities used for instituting, accomplishing, or administering an approved flood control program works.**
- (6) The flood control program and any appurtenant works conform to the requirements of IC 14-28-5 and this article.** (*Natural Resources Commission; 312 IAC 27-3-1*)

312 IAC 27-3-2 Flood Control Program Approval

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 2. Upon signature by the department director or a designate of the department director approving a loan application, a flood control program is approved under IC 14-28-5-8(2). *(Natural Resources Commission; 312 IAC 27-3-2)*

312 IAC 27-3-3 Coordination between the department and the state budget agency

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 3. The department shall coordinate with the state budget agency to maintain a sufficient balance in the fund. *(Natural Resources Commission; 312 IAC 27-3-2)*

312 IAC 27-3-4 Consideration of priority ratings

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 4. (a) The department shall consider and act upon each application for a loan in the order an application is received.

(b) As soon as practicable after an application is received, the department shall inform the applicant whether the application is substantially complete.

(1) If the department determines an application is not substantially complete, the applicant shall be provided at least twenty (20) days to complete the application.

(2) If the application is resubmitted within the period provided by the department, and is determined by the department to be substantially complete as resubmitted, the application shall be considered served on the day originally submitted.

(3) If the application is not resubmitted within the period provided by the department, or is not deemed to be substantially complete on resubmission, the application shall be considered denied.

(4) A denial under this subsection does not prohibit an applicant from serving a new application for the same purpose.

(c) If more than one application is received by the division on the same day, and a sufficient balance is not present in the fund to cover each application received on this day, the department shall rank and prioritize the applications as provided in IC 14-28-5-11 and this rule:

(1) Addressing an emergency shall be given the first priority.

(2) Repairing an existing facility shall be given secondary priority.

(3) Beginning new construction shall be given third priority.

(4) Proposals to fund planning, engineering, administration, or legal expenses shall be given fourth priority.

(5) Any other purpose shall be given fifth priority.

(d) The local unit seeking a loan for the highest priority shall be given first consideration under this article. If a sufficient balance remains after funding the

highest priority, the department may make an additional loan or loans in the descending order of the priority ratings.

(e) Except as provided in this subsection, the department shall not approve a loan to a local unit to satisfy, in whole or in part, a previously existing indebtedness. A loan may be approved to satisfy indebtedness caused by repairs to existing facilities or by construction, during an emergency requiring immediate relief from actual or threatened flood damage, if the emergency occurred within one hundred eight (180) days preceding the date of the application. *(Natural Resources Commission; 312 IAC 27-3-4)*

312 IAC 27-3-5 Report to the Commission

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 5. Not later than July 1 of each calendar year, the division shall provide the commission with an annual report summarizing the activities of the department under this article. The report shall include information concerning the status of the fund. *(Natural Resources Commission; 312 IAC 27-3-5)*